

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff

v.

ALEK BAUMGARTNER,
Defendant.

NO. CR18-5579-RBL

DRUG REENTRY ALTERNATIVE
MODEL (DREAM) CONTRACT

INTRODUCTION

You have been invited by the DREAM Executive Review Team to participate in the DREAM program of the Western District of Washington, at Seattle, a post-plea/pre-adjudication program in which you enter a plea pursuant to the terms of a written plea agreement that is held in abeyance while you complete the program.¹ Contingent upon approval by the Court and your agreement to participate in the program and abide by the governing terms of the program as set forth herein, you may participate in the DREAM program to enable intensive treatment, sanction alternatives and incentives to effectively address the substance abuse issues that appear to be contributing causes for your criminal conduct. Successful completion of the DREAM program leads to dismissal of the

¹ The Executive Review team is comprised of the DREAM Judicial Officer, two Assistant United States Attorneys, a U.S. Probation Officer and an Assistant Federal Public Defender. *See* Interagency Agreement, ¶ 3.

1 charges. If you are terminated from the program however, a sentence will be imposed by
2 the Court overseeing the DREAM program based on the guilty plea or pleas previously
3 entered pursuant to the terms of the written plea agreement.

4 **DREAM PROGRAM BASICS**

5 Participation is entirely voluntary but mandates your commitment to at least 12
6 months with the possibility that your required participation may be extended up to no
7 more than 24 months. You will be assigned an attorney from the Criminal Justice Act
8 panel who is a member of the Executive Review Team for the DREAM program. An
9 Assistant United States Attorney, also a member of the Executive Review Team, will be
10 assigned to your case as well. Both the panel defense attorney and the Assistant United
11 States Attorneys will work with the DREAM program's Probation Officer to provide
12 additional support and encouragement for your hoped for success in the DREAM
13 program.

14 The DREAM Executive Review Team, through correspondence from the DREAM
15 Probation Officer, will seek approval for a transfer of your case from the Originating
16 District Judge to the DREAM Judicial Officer. The correspondence will explain the
17 DREAM Executive Review Team's reasons for recommending participation in the
18 DREAM program, and a brief summary of the anticipated plea agreement. If rejected,
19 the case will proceed in the usual course before the Originating District Court. If
20 approved, the Originating District Court will execute an Order transferring your case for
21 all purposes to the DREAM program Judicial Officer.

22 Thereafter the Probation Office will arrange for you to make an initial appearance
23 before the DREAM Judicial Officer. The initial hearing before the DREAM Judicial
24 Officer will be conducted in open court, in the presence of the DREAM Executive
25 Review Team and your original defense counsel. At that time, to proceed further, you
26 will be required to execute this DREAM contract, and enter a guilty plea(s) to one or
27 more of the criminal charges against you in the case referenced above, pursuant to the
28

1 terms of a written plea agreement.² The Court will make a final determination whether to
2 accept your DREAM contract, your guilty plea(s) and the plea agreement before you can
3 begin participation in the DREAM program. Once each of these documents are executed
4 before the DREAM Judicial Officer, and approved by the Court, you are a participant in
5 the DREAM program.

6 As set forth herein, by entering this agreement and the DREAM program, you
7 agree to comply with the directives of your assigned Probation Officer consistent with
8 your Appearance Bond and the terms of this contract including, but not limited to, an
9 agreement to participate in a drug and alcohol evaluation and in any and all treatment and
10 testing recommended as a result of that evaluation. You also agree to drug and alcohol
11 testing for substance use issues, and may also be required to participate in programs
12 designed to address underlying causes of criminal activity. Finally, you must also
13 comply with all conditions of the terms of your post-plea/pre-adjudication written plea
14 agreement.

15 If you successfully complete the DREAM program, then, as specified in the
16 written plea agreement, your guilty plea(s) will be vacated and the criminal charges
17 against you in the case referenced above will be dismissed with prejudice. If you are
18 terminated from the program, you will be sentenced by the Court overseeing the DREAM
19 program based on the guilty plea or pleas previously entered pursuant to the written plea
20 agreement. Although the DREAM Judicial Officer will appreciate and reward genuine
21 attempts to succeed in the DREAM program, the Court may impose a sentence up to and
22 including what would have been imposed if the standard plea was taken, as reflected in
23 the written plea agreement and permitted by law, and based on all information available,
24 including your conduct in the DREAM program.

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28 ² The written plea agreement will be the result of negotiations by your defense counsel with the government and
shall contain terms acceptable to the government, you and your defense counsel.

DREAM PROGRAM APPEARANCES

The time spent in DREAM court is divided into stages and varies based on each participant's circumstances and progress. However, from the outset, and at a minimum, you will be required to appear before the DREAM Judicial Officer at least once a month to evaluate your progress. The other members of the Executive Review Team will be present and treatment and/or other program providers may be present, as deemed appropriate by the Executive Review Team.

Every effort will be made to ensure the time of the appearance does not conflict with your employment or treatment or other programming. Progress reports from the Probation Officer will be provided to the Court and all members of the Executive Review Team at least 24 hours prior to your appearance. These reports will describe both successes and problems you have experienced. A copy of the report will be available to you via the Assistant Federal Public Defender.

DREAM PROGRAM TREATMENT AND COUNSELING PROGRAMS

An important part of the DREAM program will be your participation in substance abuse treatment and counseling programs and/or other programs addressing underlying causes of criminal activity as determined necessary by the Probation Officer and the other members of the DREAM Executive Review Team. Treatment and other program providers will be expected to share information regarding your participation and progress in any treatment and counseling programs with all of the members of the DREAM Executive Review Team. Treatment and other program providers may also be present at DREAM court appearances, at which they will be expected to discuss your participation and progress with the DREAM Judicial Officer, in the presence of all of the members of the DREAM Executive Review Team. To enable treatment and other program providers to freely share information regarding your participation and progress in substance abuse treatment and counseling programs and other programs, you will be required to execute a waiver of confidentiality in the form attached as Exhibit A.

1 **DREAM PROGRAM STATEMENT OF CULPABILITY**

2 Another important part of the DREAM program is your willingness to provide the
3 government all information known about the offense or offenses originally charged. The
4 DREAM program's Assistant United States Attorney and your defense counsel will
5 schedule the meeting after you have been approved for participation in DREAM. The
6 DREAM program's Assistant Federal Public Defender may also be present at the
7 meeting. Every effort will be made to ensure the time of the requisite meeting does not
8 conflict with your employment or treatment or other programming.

9 The government agrees that this statement is not for law enforcement purposes but
10 rather for the sole purpose of confirming your sincere intent to achieve sobriety and
11 participate in DREAM. The fact that you may not have any relevant or other information
12 to provide or that the government is already aware of, will not preclude a determination
13 by the DREAM Executive Review Team that you have complied with this requirement.
14 Further, as noted below, the government agrees that it will not introduce any statement
15 made by you against you in its case-in-chief in any future prosecution in this case, except
16 in a prosecution for perjury or making a false statement, nor may it be used to file
17 additional charges against you or require further cooperation by you.

18 **LIMITED USE OF STATEMENTS MADE DURING**
19 **DREAM PROGRAM APPEARANCES**

20 Your complete candor with the DREAM Executive Review Team and during your
21 DREAM court appearances is expected throughout your participation in the DREAM
22 program. To encourage your candor, the United States Attorney's Office has agreed as
23 follows:

- 24 (A) Except as otherwise provided in subparagraph (B) below statements made
25 and documents and other information provided by you during and/or in
26 relation to any and all DREAM program proceedings, shall not be used
27 (i) against you in the government's case-in-chief in any future
28 proceedings, including but not limited to determine the applicable
 guideline range if terminated from the DREAM program;

- 1
- 2 (ii) to file additional criminal charges against you, except as a basis for
- 3 prosecution for perjury or making a false statement;
- 4 (iii) to compel your cooperation against others previously known or
- 5 unknown,
- 6 or
- 7 (iv) to determine the applicable sentencing guideline range if you are
- 8 terminated from the DREAM program.

9 (B) Except as set forth in paragraph (A) above, the United States Attorney's

10 Office may use

- 11 (i) information derived directly or indirectly from DREAM program
- 12 statements for the purpose of obtaining and pursuing leads to other
- 13 evidence, which evidence may be used for any purpose;
- 14 (ii) DREAM program statements and all evidence obtained directly or
- 15 indirectly from DREAM program statements to refute or counter at
- 16 any stage of any DREAM proceeding any evidence, argument,
- 17 statement or representation(s) offered by you or on your behalf in
- 18 connection with that proceeding; or,
- 19 (iii) for impeachment purposes in any future proceedings including
- 20 sentencing.

21 The government's agreements above are limited to the United States Attorney's Office

22 for the Western District of Washington and does not bind any other federal, state, local,

23 or foreign prosecuting, enforcement, administrative, or regulatory authorities. Moreover,

24 the government's agreement in subparagraph A is limited to DREAM program

25 statements, including statements obtained during the requisite statement of culpability,

26 and does not apply to any statements made or documents or other information provided

27 by you prior to your participation in DREAM or made after your termination from

28 DREAM, whether oral, written, or recorded.

DREAM PROGRAM SUPERVISION VIOLATIONS AND SANCTIONS

The DREAM program's Probation Officer is charged with overseeing your supervision and monitoring your compliance with treatment. In preparation for DREAM court appearances, the DREAM Probation Officer will prepare a DREAM Progress Report for the DREAM Judicial Officer and other members of the Executive Review Team. The report will inform the Court and the parties of your conduct on supervision.

The DREAM program anticipates that you may struggle during treatment and noncompliant behavior, including relapse, will result in some level of sanctions. However, sanctions imposed are intended to help you succeed in the program. Sanctions may include, but are not limited to:

- Additional education or writing assignments (for example, write out an explanation for noncompliant behavior and describe a plan to correct it);
- Order to participate in community service as part of the DREAM program;
- Judicial reprimand delivered during DREAM court proceedings in front of other DREAM program Participants;
- Order to return to DREAM program proceedings to observe for a half or full day;
- Curfew restriction for up to 30 days;
- Increase in frequency of progress hearings before the DREAM Judicial Officer;
- Order to complete a term of home confinement (with conditions that may include alcohol monitors and standard location monitoring with GPS);
- Order to complete a term of up to 30 days at a residential reentry center;
- Order to complete a term at a residential drug treatment facility;

- Order to spend up to 7 days in jail³; and,
- Termination from DREAM program.

Factors that will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time you have remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether you voluntarily disclose the violation. Dishonesty on your part will result in enhanced sanctions. Depending on these factors, any of the sanctions listed above, including termination from the DREAM program, will be available to the DREAM Judicial Officer. Additionally, if appropriate, any or all of the available sanctions may be ordered more than once during the course of a participant's progress through the DREAM program.

Sanctions imposed should be completed by your next DREAM court appearance, unless the DREAM Judicial Officer allows you more time. You may also be required to report on performance of the sanction at your next DREAM court appearance.

Further, the DREAM S Probation Officer need not wait until your scheduled court appearance to address problems with supervision. If you fail to abide by directives of your Probation Officer or if the Probation Officer believes that you have committed other violations of your supervision, the DREAM Probation Officer has the discretion to: (1) contact you directly to address the violation; (2) reach a proposed method of addressing the violation through discussions with members of the Executive Review Team, including the DREAM Judicial Officer; or (3) request the issuance of a warrant for your arrest by the DREAM Judicial Officer.

³ The 7 day limit applies only to orders for jail time, and does not limit the DREAM Judicial Officer's ability to order a longer period of time in home confinement, a residential reentry center, or a residential drug treatment facility. Nor does it limit the DREAM Probation Officer's ability to place a participant in a residential reentry center for transitional purposes.

1 When expedited action is appropriate and the parties agree on the resolution, the
2 agreed upon sanction or adjustment in treatment can be imposed through a modification
3 without an appearance before the DREAM Judicial Officer. The Probation Officer's
4 DREAM Progress Report will inform the DREAM Judicial Officer however, whether
5 you properly completed the sanction or modification imposed. Failure to complete the
6 ordered modification may result in additional sanctions, including, but not limited to,
7 termination from the program.

8 If you wish to contest the violation(s) alleged, you may do so. A request for a
9 hearing on whether you in fact, committed the alleged conduct will not automatically
10 result in termination from the DREAM program. The only issue at the hearing however,
11 is whether you in fact committed the alleged conduct; it is not an opportunity for you to
12 offer an explanation for the conduct. The DREAM Assistant Federal Public Defender
13 will assist you at the adversarial hearing. And the DREAM Judicial Officer will
14 ultimately decide whether the allegation is true.

15 Finally, the DREAM program is a voluntary program. Therefore, when faced with
16 any sanction, you will always have the option of requesting termination from the
17 DREAM program and proceed to sentencing before the DREAM Judicial Officer.

18 **TERMINATION FROM THE DREAM PROGRAM**

19 Termination from the DREAM program prior to successful completion of its
20 requirements may be voluntary or involuntary. Cause for involuntary termination from
21 the DREAM program include, but is not limited to, the commission of new law
22 violations, repeated drug use, chronic pattern of refusal to cooperate with a treatment or
23 other program provider, repeated refusals to cooperate with the DREAM program's
24 imposed sanctions or to participate in the DREAM program in a meaningful manner.
25 Final decisions regarding involuntary termination from DREAM will be made by the
26 DREAM Judicial Officer.

27 In either case, whether you were involuntarily or voluntarily terminated from
28 further participating in DREAM, the case will be set for sentencing before the DREAM

1 Judicial Officer and you may be detained unless the DREAM Judicial Officer finds that
2 there a condition or combination of conditions that reasonably assures your appearance
3 for sentencing or protect the community. The DREAM Judicial Officer will not be
4 bound to provide the benefit of dismissal with prejudice that your plea agreement would
5 have required had you successfully completed the DREAM program. Prior to sentencing,
6 the DREAM Judicial Officer may order the production of a Presentence Report. And at
7 sentencing, the DREAM Judicial Officer may consider in imposing a sentence otherwise
8 consistent with the terms of the written plea agreement, all conduct that has taken place
9 during your participation in the DREAM program, including any failures, sanctions
10 imposed and successes achieved.

11 **GRADUATION AND BENEFITS**

12 Your successful completion of the DREAM program will be determined by the
13 DREAM Judicial Officer and the other members of the Executive Review Team.
14 Successful completion of the program is subject to the minimum requirement that you
15 demonstrated at least six months of continuous sobriety. Upon successful completion,
16 you will be permitted to withdraw your previously-entered guilty plea(s), and the
17 criminal charges previously pending at the time of your guilty plea(s) will be dismissed
18 with prejudice.

19 //

1 **AGREEMENT TO PARTICIPATE**

2 Participant:

3
4 I, ALEK BAUMGARTNER, have read, or someone has read to me in the language I best
5 understand, this Contract and the plea agreement that would be a condition of my
6 participation in the DREAM program. I have discussed this Contract and the plea
7 agreement with my attorney and I understand its terms. I have also discussed with my
8 attorney the DREAM program and I understand that program. I voluntarily agree to
9 participate in the DREAM program subject to the terms set forth in this Contract and the
10 plea agreement. I understand I can revoke my voluntary participation in the DREAM
11 program at any time and have my criminal case set for sentencing before the DREAM
12 Judicial Officer.

13
14 
15 ALEK BAUMGARTNER

16 
17 DATE

18 DREAM Assistant Federal Public Defender:

19 I, Corey Endo, Assistant Federal Public Defender, representing the Participant in
20 connection with the DREAM program, have discussed the DREAM program, the plea
21 agreement that would be a condition of participation in the DREAM program, and this
22 Contract with the Participant and the Participant's attorney in the underlying criminal
23 matter. I believe that the Participant understands the DREAM program, the terms of the
24 plea agreement that would be a condition of participation in the DREAM program, and
25 the terms of this Contract, and that the Participant's agreement to participate in the
26 DREAM program subject to the terms of this Contract and the plea agreement that would
27 be a condition of participation in the DREAM program is knowingly and voluntarily
28 made.

29 
30 COREY ENDO

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32 DATE

33 Assistant Federal Public Defender.

34 DREAM Assistant United States Attorney:

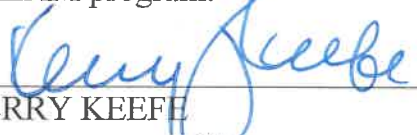
35 I, James D. Oesterle, the Assistant United States Attorney representing the United States
36 Attorney's Office for the Western District of Washington, in the DREAM program, agree

1 to the terms of this Contract on behalf of the U.S. Attorney's Office and accept the above
2 named Participant into the DREAM program subject to the terms of this Contract and the
3 plea agreement that would be a condition of the Participant's participation in the
4 DREAM program.

5  9/20/19
6 JAMES D. OESTERLE DATE
7 Assistant United States Attorney

8 DREAM Assistant United States Attorney:

9 I, Kerry Keefe, the Assistant United States Attorney representing the United States
10 Attorney's Office for the Western District of Washington, in the DREAM program, agree
11 to the terms of this Contract on behalf of the U.S. Attorney's Office and accept the above
12 named Participant into the DREAM program subject to the terms of this Contract and the
13 plea agreement that would be a condition of the Participant's participation in the
14 DREAM program.

15  9/20/19
16 KERRY KEEFE DATE
17 Assistant United States Attorney

18 DREAM Probation Officer:

19 I, Monique Neal, the Probation Officer assigned to the DREAM program, accept the
20 above named Participant into the DREAM program subject to the terms of this Contract
21 and the plea agreement that would be a condition of the Participant's participation in the
22 DREAM program.

23  9/20/19
24 MONIQUE NEAL DATE
25 U.S. Probation and Pretrial Services Office
26
27
28

1 DREAM Judicial Officer:

2 Subject to acceptance of the Participant's guilty plea(s) and plea agreement, the Court
3 hereby accepts the above named Participant into the DREAM Program subject to the
4 terms of this Contract and the plea agreement that would be a condition of the
5 Participant's participation in the DREAM program.

6 
7 The Honorable RICHARD A. JONES
8 U.S. District Court Judge

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DATE 9/20/19

1 Exhibit A

2 AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION TO DREAM
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4 I, ALEK BAUMGARTNER, the undersigned, have voluntarily agreed to participate in
5 the Western District of Washington's Drug Reentry Alternative Model (DREAM)
6 program. As part of my participation in the DREAM program, I hereby authorize any
7 and all substance abuse treatment and counseling and other programs to which I may be
8 referred as part of the DREAM program to release confidential information in their
9 records, possession, or knowledge, of whatever nature may now exist or come to exist, to
10 the following participants in the DREAM program: (a) United States District Court for
11 the Western District of Washington; (b) United States Pretrial Services and Probation
12 Office for the Western District of Washington; (c) the Federal Public Defender's Office
13 for the Western District of Washington; and (d) the United States Attorney's Office for
14 the Western District of Washington (collectively, the DREAM Executive Review Team).

15 The confidential information I hereby authorize to be released to the DREAM
16 Executive Review Team will include, without limitation: date of entrance to program;
17 attendance records; urine testing results; type, frequency, and effectiveness of therapy
18 (including psychotherapy notes); general adjustment to program rules; type and dosage of
19 medication; response to treatment; test results (psychological, vocational, etc.); date of
20 and reason for withdrawal from program; and prognosis.

21 I understand that, subject to any exceptions to confidentiality that may apply under
22 federal or state law, the DREAM Executive Review Team may use the confidential
23 information hereby authorized to be released only in connection with their evaluation of
24 my participation and progress in the DREAM program and my compliance or non-
25 compliance with the terms of my diversion, and their evaluation of the effectiveness of
26 the DREAM program as a whole. I also understand that this authorization will remain
27 valid until my termination from the DREAM program, whether successfully or
28 unsuccessfully, at which time this authorization for disclosure of confidential information
will expire. I understand, however, that confidential information disclosed pursuant to
this authorization may subsequently be used by the United States District Court for the
Western District of Washington and/or the United States Pretrial Services and Probation
Office for the Western District of Washington, to initiate or support an action alleging a
violation of the terms of my diversion and/or to prepare a Presentence Report, make a
recommendation regarding sentencing, and determine the appropriate sentence, as a result
of which the information may no longer be deemed confidential and may no longer be
protected by federal or state law.

1 Finally, I understand that I have the right to revoke this authorization to release
2 confidential information, in writing, at any time by sending written notification to the
3 United States Pretrial Services Officer assigned to supervise me while participating in the
4 DREAM program. I understand that if I revoke this authorization to release confidential
5 information, I will thereby revoke my authorization for further disclosure of such
6 information. I also understand that if I revoke this authorization to release confidential
7 information before I complete the DREAM program, it may result in my termination
8 from the DREAM program and may be considered a violation of DREAM program rules
9 or of a condition of my DREAM contract.

10 I have read this authorization to release confidential information, have discussed it
11 with my attorney, understand its terms, and by signing below agree to it.

12 
13 ALEK BAUMGARTNER

14 9/20/19
15 DATE

16 I am the attorney representing the individual signing this authorization to release
17 confidential information in connection with the DREAM program and have discussed the
18 terms of this authorization with this individual. I believe this individual understands the
19 terms of this authorization and that this individual's agreement to sign this authorization
20 is knowingly and voluntarily made.

21 
22 COREY ENDO
23 Assistant Federal Public Defender

24 9/20/19
25 DATE